

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 97-0134 ITC
GROSS INCOME TAX
For Years 1988 to 1994**

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ISSUE

I. Gross Income Tax – Public Utility Exemptions

Authority: 45 IAC 1-1-151; IC 6-2.1-1-16-23 & 24; IC 6-2.1-1-13; IC 6-1.1-10-6 & 7; IC 6-2.1-3-33; Dept. of Treasury vs. City of Linton, 60 N.E.2d at 948 (Ind. 1945)

Does the Indiana Gross Income Tax apply to receipts collected from Indiana residents by an out of state municipality for water service provided by it.

STATEMENT OF FACTS

The taxpayer, an out of state municipality, operated a water utility for its citizens and a neighboring Indiana community. The taxpayer did not file an IT-20G return reporting receipts from its water utility operations in Indiana for 1988 to 1994. In the subsequent audit, the Indiana auditor used the municipality records to calculate taxable Indiana water receipts for these audit years. Taxpayer appeals on grounds that Indiana municipalities providing water service are exempt from the Gross Income tax.

DISCUSSION

In imposing the Gross Income tax, the Indiana Code 6-2.1-1-16-23 & 24 defines "taxpayer" to include both corporations (23) and municipal corporations (24). The income to be taxed is defined in Indiana Code 6-2.1-1-13 as "the remainder of: (1) all

gross income which is not exempt from tax under IC 6-2.1-3; less (2) all deductions which are allowed under IC 6-2.1-4.”

As 45 IAC 1-1-151 codifies, municipal entities can be taxed despite their non-profit status. The Indiana Supreme Court affirmed in Dept. of Treasury vs. City of Linton, 60 N.E.2d at 950 that “[w]e hold, therefore, that the operation of water, electric and gas utilities by appellee with service to its citizens, is a private and proprietary activity and business and income therefrom was properly taxable under the 1937 amendment to the Indiana Gross Income Tax Law.”

The taxpayer does not claim any deductions, but cites Indiana Code 6-2.1-3-33 which indicates there is an exemption for “(3) nonprofit corporations formed solely for the purpose of supplying water to the public;” and, “(5) a nonprofit corporation formed for the purpose of providing a combination of; (A) water; and, (B) sewer and sewage service; to the public.” While a municipality is, or may be, nonprofit, it performs functions beyond water and sewer service and the taxpayer municipality was not formed to provide these services exclusively.

The Indiana statutes explicitly exempt both municipal and nonprofit water utilities from real property taxes. While recognizing them as separate taxpaying entities in the definition section of the gross income tax code, the Indiana statutes only provide an exemption from the gross income tax for nonprofit corporations providing water service. Inasmuch as the gross income tax is applied to all receipts collected from Indiana residents unless specifically exempted, and no exemption is provided for municipal corporations providing water service, the Indiana Gross Income tax applies to this taxpayer’s receipts.

FINDING

Taxpayer appeal denied.